

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MAX MINDS, LLC,

Plaintiff,

v.

TRIANGLE EXPERIENCE GROUP, INC.,
ROBERT CLARE and JEFFREY MASE,

Defendants.

CAUSE NO. 1:24-cv-00779-MPB-MKK

JURY TRIAL DEMANDED

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SUR-REPLY (ECF 147)

The proposed sur-reply (ECF 147-1) is ten pages of argument that is more appropriately presented at a hearing on the Amended Motion for Preliminary Injunction (ECF 104) (“AM-FPI”). Accepting more pages of written argument will only create more unnecessary briefing and lengthen the time in which a hearing can be held on the AMFPI and in which a preliminary injunction can be entered.

The issues on pages one through eight of the proposed sur-reply (ECF 147-1 at 1-8) were raised by Max previously, first with TEG, and then with the Honorable Magistrate Judge. Max raised these issues immediately after TEG filed its oversized opposition at ECF 125 on January 31, 2025. In a conference with the Magistrate Judge on February 11, 2025 (ECF 138) the Magistrate Judge instructed Max to proceed as outlined in the Local Rules for Motions for Summary Judgment in SDINLR 56-1(i) concerning collateral motions. Max did so by raising the issues in Max’s reply brief. TEG knew what was coming but did not seek to supplement TEG’s opposition. TEG did nothing.

The issue of first breach on pages 8-9 was first raised by Max in the related case (1:24-

cv-00650-JPH-MG) back on May 10, 2024 in Max's affirmative defenses to TEG's complaint. (ECF 37 at 24). The issue of first breach is not new.

Finally, the single-spaced material on page ten of ECF 147-1 is pure argument directed at issues previously raised. The last page (which is really two pages if properly formatted according to the SDINLR) is not new and does not warrant a sur-reply.

Courts generally do not permit litigants to file a sur-reply brief. *Hall v. Forest River, Inc.*, 3:04-CV-259-RM, 2008 U.S. Dist. LEXIS 31564, 2008 WL 1774216, at *1, n.1 (N.D. Ind. Apr. 15, 2008). A sur-reply is only occasionally allowed "where the moving party raises new factual or legal issues in its reply brief, in order to ensure that the non-moving party has an adequate chance to respond to the new issues." *Cummins, Inc. v. TAS Distrib. Co.*, 676 F. Supp. 2d 701, 705-06 (C.D. Ill. 2009). Where no new facts or argument are presented, a motion permitting a sur-reply is properly denied. *United States Bank N.A. v. Bank of Am., N.A.*, No. 1:14-cv-01492-TWP-DKL, 2015 U.S. Dist. LEXIS 126398, at *2 (S.D. Ind. Sep. 22, 2015); *Walker v. Green Bay Corr. Inst. Health Servs. Unit*, No. 16-C-1331, 2018 WL 3118298, 2018 U.S. Dist. LEXIS 105624, at *4-5 (E.D. Wis. June 25, 2018).

Finally, if the Court believes further opportunity for argument should be given, an adequate opportunity can be provided to TEG at the hearing on the AMFPI. Max is prepared to reserve its response to TEG's sur-reply arguments and not seek a sur-sur-reply which would waste more of the Court's time.

DATED: February 28, 2025

Respectfully submitted,

/s/ J. Campbell Miller
campbell.miller@sriplaw.com
SRIPLAW, P.A.
231 S. Rangeline Road
Suite H
Carmel, IN 46032

561.404.4350 – Telephone
561.404.4353 – Facsimile

and

JOEL B. ROTHMAN
(*pro hac vice*)
joel.rothman@sriplaw.com

SRIPLAW, P.A.
21301 Powerline Road
Suite 100
Boca Raton, FL 33433
561.404.4335 – Telephone
561.404.4353 – Facsimile

and

/s/ Philip D. Sever

PHILIP D. SEVER
Indiana Bar No.: 25384-49
phil@landownerattorneys.com

SEVER, STORY, WALKER
742 South Rangeline Road
Carmel, IN 46032
317.961.1202 – Telephone

Counsel for Plaintiff